

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re: W.R. GRACE & CO., et al., Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING
FOURTH INTERIM QUARTERLY FEE APPLICATION OF
WALLACE, KING, MARRARO & BRANSON, PLLC**

This is the final report of Warren H. Smith & Associates, P.C. ("Smith"), acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Fourth Interim Quarterly Fee Application of Wallace, King Marraro & Branson, PLLC (the "Application").

BACKGROUND

1. Wallace, King, Marraro & Branson, PLLC ("Wallace King") was retained as special litigation and environmental counsel to the Debtor. In the Application, Wallace King seeks approval of fees totaling \$253,359.50 and costs totaling \$8,576.72 for its services from January 1, 2002, through March 31, 2002.

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time entries included in the exhibits to the Application. We reviewed the Application for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2001, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11

U.S.C. 330, Issued January 30, 1996, (the "Guidelines"), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on Wallace King based on our review, and received a response from Wallace King, portions of which response are quoted herein.

DISCUSSION

General Issues

3. We note that Wallace King takes a 40% reduction in its fees relating to the "Honeywell litigation". According to paragraph 3 of the Verified Application of Wallace, King Marraro & Branson, for Services and Reimbursement of Expenses as Special Litigation and Environmental Counsel to W.R. Grace & Co., et al., for the Tenth Interim Period from January 1, 2002 through January 31, 2002, (the "January Monthly Invoice"):

“[t]he Retention Order also allowed for a special fee arrangement with the Debtors in connection with a pending litigation matter, *Interfaith Community Organization v. Honeywell International, Inc. et al* (“Honeywell litigation”). By agreement with the Debtors, WKMB [Wallace King] was entitled to receive its full standard hourly rates until June 21, 2001 when its standard hourly rates billed for the Honeywell litigation was reduced by 40% in return for an interest in the outcome of the Honeywell litigation. Thus, a 40% discount is applied to all professional fees billed to the Honeywell matter (Matter 6) after June 21, 2001.”

Accordingly, the Application reflects this adjusted amount.

Specific Time and Expense Entries

4. In our initial report we noted that during this interim period, CHM often did not include sufficient detail in his time entries. See Exhibit A. Rule 2016-2(d) of the Delaware Local Rules states “activity descriptions . . . shall be sufficiently detailed to allow the Court to determine

whether all the time, or any portion thereof, is actual, reasonable, and necessary . . .” Thus in our initial report we requested that Wallace King please advise this professional to provide more detailed time entries in the future. Wallace King assured us that it would do so, and this satisfies our concern.

5. In our initial report we noted that on 02/14-15/02 CHM attended meetings in New York for a total of 11.5 hours and \$5,060.00. No travel time was indicated and no identifiable expenses were submitted.

02/14/02	CHM	All-day meeting with Carella Byrne re trial preparation.	8.50
02/15/02	CHM	Meeting with expert in New York	3.00

The Delaware Local Rules, Rule 2016-2(d)(viii) states “Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates.” We noted that without further information it could not be determined if any of the time involved was working or non-working travel time, and asked Wallace King to please provide more details regarding this meeting in New York. Wallace King responded that it did not bill for non-working travel for this trip, and this satisfies our concern.

6. In the initial report we noted that in January, February and March of 2002, overtime transportation expenses in the total amount of \$680.90 were included in the Application, as follows:

January Application	Overtime Transportation	\$319.04
February Application	Overtime Transportation	\$251.08
March Application	Overtime Transportation	\$110.78

The Guidelines, Rule I.E. states that “[i]n evaluating fees for professional services, it is relevant to consider . . . Whether the expense is reasonable and economical.” In the initial report we noted that without further information we cannot determine whether this expense was justified, and asked Wallace King to please provide further information in this regard. Wallace King responded:

With the exception of approximately \$16.00 in overtime meals submitted for the January Application, the balance of the overtime expenses is for car mileage home and parking due or overtime work on the case. Wallace King's policy is that we pay transportation home and dinner for staff who work more than 2 hours overtime per day (more than 9.5 hrs/day). The overtime work included here was performed by two paralegals, Ms. Banks and Mr. Moasser in connection with various time critical projects that could not be completed within the normal work day. This includes preparation of notebooks for fact and expert witness next day meetings and document analyses for next day meetings with the clients.

This response satisfies our concern.

7. In our initial report we noted that on 03/19 through 03/20/02 CHM traveled to Florida for an all day meeting with witnesses. Preparation and attendance at this meeting included 21.40 hours of time and totaled \$3,476.00 in fees, as follows:

03/18/02	CHM	Prepare for witness meeting in Florida.	2.50
03/19/02	CHM	All-day meeting with witness in Florida and pre-meeting with J. Agnello and client.	8.50
03/20/02	CHM	Meeting in Florida re documents (3.2) review remediation document and telephone conference with government re same (1.0).	4.70
03/21/02	CHM	Prepare memo to file re witness interview (2.5); conference with Agnello (.5); conference with experts re exhibits (1.2); review invoices (1.5).	5.70

We noted that without further information it could not be determined if any of the time involved was working or non-working travel time, and asked Wallace King to provide more details regarding this meeting in Florida. Wallace King responded that it did not bill for non-working travel for this trip, and this satisfies our concern.

8. We note that while the Application does not state the requested rate for copying charges and facsimiles, the January and February monthly fee applications state that Wallace King charges \$0.15 per page for duplication and \$.75 per page for outgoing facsimiles, with no charge for incoming facsimiles.

CONCLUSION

9. Thus, we recommend approval of fees totaling \$253,359.50 and costs totaling \$8,576.72 for Wallace King's services from January 1, 2002, through March 31, 2002.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.

By: 

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served First Class United States mail to the attached service list on this 29th day of July, 2002.



Warren H. Smith

SERVICE LIST

Notice Parties

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Exhibit A

<u>Date</u>	<u>Tkpr</u>	<u>Description</u>	<u>Hours</u>
02/01/02	CHM	Review articles from client.	0.50
02/06/02	CHM	Review documents from client (1.0 hrs.); meetings re Libby matter (2.5).	3.50
02/11/02	CHM	Review documents from client.	0.60
02/14/02	CHM	Review articles from client.	0.50
02/19/02	CHM	Conference with EPA (.5 hrs); review various articles from client (.5 hrs.).	1.50
02/21/02	CHM	Conference with W.Corcoran (.5 hrs.) and review memos sent to EPA (1.0 hrs.).	1.50
02/25/02	CHM	Review news articles from client.	0.80
03/04/02	CHM	Review articles from client.	0.50
03/08/02	CHM	Review materials from client (.5); conference with EPA (.3)	0.80
03/12/02	CHM	Review articles from client.	0.50
03/19/02	CHM	Conference with client.	0.30
03/22/02	CHM	Conference with EPA.	0.50
03/25/02	CHM	Review articles from client.	0.50
03/27/02	CHM	Meeting with EPA (2.5 hrs); conference with client re same (.5).	3.00
03/28/02	CHM	Review articles.	0.50